



E-543-1

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Advanced Vacuum Systems, Inc.
60 Fitchburg Road
Ayer, Massachusetts 01432

Attention: Norman R. Buck
President

Dear Mr. Buck:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that Advanced Vacuum Systems, Inc. (Advanced Vacuum) has violated Section 787.6 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768-799 (1996), as amended (61 Fed. Reg. 12714, March 25, 1996))¹ (the Regulations),² issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1996)) (the Act),³ as set forth below.

Facts constituting violation:

On or about April 28, 1992, Advanced Vacuum exported a U.S.-origin low pressure sintering furnace from the United States to the People's Republic of China without obtaining the validated license required by Section 772.1(b) of the Regulations. The Department alleges that, by exporting a U.S.-origin commodity to any person or destination in violation of or contrary to the terms of the Act, or any regulation, order, or license issued under the Act, Advanced Vacuum committed one violation of Section 787.6 of the Regulations.

¹The March 25, 1996 Federal Register publication redesignated, but did not republish, the existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, the March 25 Federal Register publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996.

²The Regulations governing the violations at issue are found in the 1992 version of the Code of Federal Regulations. Those Regulations are codified at 15 C.F.R. Parts 768-799 (1992).

³The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notice on August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), and extended again on August 14, 1996 (61 Fed. Reg. 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1996)).



Accordingly, Advanced Vacuum is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

Denial of export privileges (see Section 764.3(a)(2), Section 788A.3(a)(1), and Section 788A.3(a)(2) of the Regulations);

Exclusion from practice (see Section 764.3(a)(3) and Section 788A.3(a)(3) of the Regulations); and/or

The maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) and section 788A.3(a)(4) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If Advanced Vacuum fails to answer the charges contained in this letter within 30 days after service as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

Advanced Vacuum is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a settlement.

Advanced Vacuum's answer should be filed with the Office of the Administrative Law Judge/Export Control, U.S. Department of Commerce, Room H-6839, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of Advanced Vacuum's answer should be served on the Department at the address set forth in Section 766.5(b), adding "ATTENTION: Lorie B. Whitaker, Esq." below the address. Ms. Whitaker may be contacted by telephone at (202) 482-5311.

Sincerely,

Mark D. Menefee
Acting Director
Office of Export Enforcement

Enclosures

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
ADVANCED VACUUM SYSTEMS, INC.)
60 Fitchburg Road)
Ayer, Massachusetts 01432,)
)
<u>Respondent</u>)

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Advanced Vacuum Systems, Inc. (AVS) and the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), pursuant to Section 766.18(a) of the Export Administration Regulations (61 Fed. Reg. 12734-13041, March 25, 1996, to be codified at 15 C.F.R. Parts 730-774) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1996)) (the Act).²

¹The alleged violations occurred in 1992. The Regulations governing the violation at issue are found in the 1992 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1992)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, to be codified at 15 C.F.R. Parts 730-774, establish the procedures that apply to this matter.

²The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notice on August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), and extended again on August 14, 1996 (61 Fed. Reg. 42527, August 15, 1996), continued the Regulations in effect under the

WHEREAS, BXA has notified AVS of its intention to initiate an administrative proceeding against it by issuing a Charging Letter alleging that AVS violated the provisions of Section 787.6 of the former Regulations in that, on or about April 28, 1992, AVS exported a U.S.-origin low pressure sintering furnace from the United States to the People's Republic of China without obtaining the validated license required by Section 772.1(b) of the former Regulations;

WHEREAS, AVS has reviewed the proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed if the allegations are found to be true; it fully understands the terms of this Settlement Agreement; it enters into this Settlement Agreement voluntarily, with full knowledge of its rights, and it states that no promises or representations have been made to it other than the agreements and considerations expressed herein;

WHEREAS, AVS neither admits nor denies the allegations contained in the proposed Charging Letter;

WHEREAS, AVS wishes to settle and dispose of all the matters alleged in the proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, AVS agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (hereinafter referred to as the "appropriate Order");

NOW, THEREFORE, AVS and BXA agree as follows:

1. BXA has jurisdiction over AVS, under the Act and the Regulations, with respect to the matters identified in the proposed Charging Letter.

2. BXA and AVS agree that the following sanction shall be imposed against AVS in complete settlement of the alleged violation of the Act and former Regulations set forth in the proposed Charging Letter:

a. AVS shall pay a civil penalty of \$5,000, \$3,000 of which shall be paid in accordance with the instructions provided, within 30 days from the date of entry of the appropriate Order. Payment of the remaining \$2,000 shall be suspended for a period of three years from the date of entry of the appropriate Order and shall thereafter be waived, provided that, during the period of suspension, AVS has committed no violation of the Act, or any regulation, order, or license issued thereunder.

b. As authorized by Section 11(d) of the Act, the timely payment of the penalty agreed to in paragraph 2a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted, or to be granted, to AVS. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of AVS's export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.

3. AVS agrees that, subject to the approval of the Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the appropriate Order, when entered), including, without limitation: (a) any right to an administrative hearing regarding the allegations in the proposed Charging Letter; (b) any right to request a refund of the civil penalty imposed pursuant to this Settlement Agreement and the appropriate Order, when entered; and (c) any right to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.

4. BXA agrees that, upon entry of an appropriate Order, it will not initiate any administrative proceeding against AVS in connection with any violation of the Act or the former Regulations alleged in the proposed Charging Letter.

5. AVS understands that BXA will make the proposed Charging Letter, this Settlement Agreement and the appropriate Order, when entered, available to the public.

6. BXA and AVS agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an appropriate Order is not entered by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BXA and AVS agree that they may not use this Settlement Agreement in any administrative or judicial proceeding, and that neither party shall be bound by the

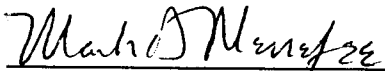
terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement serve to bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

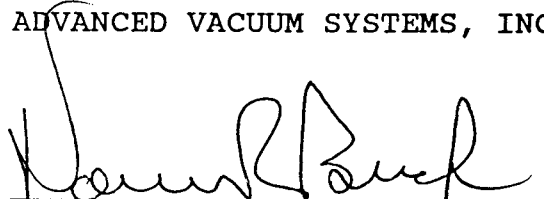
8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

BUREAU OF EXPORT ADMINISTRATION

ADVANCED VACUUM SYSTEMS, INC.



Mark D. Menefee
Acting Director
Office of Export Enforcement



Norman R. Buck
President

Date: 4/29/97

Date: April 25, 1997

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
ADVANCED VACUUM SYSTEMS, INC.)
60 Fitchburg Road)
Ayer, Massachusetts 01432,)
)
Respondent)

ORDER

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified Advanced Vacuum Systems, Inc. (AVS) of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the Act),¹ and the Export Administration Regulations (61 Fed. Reg. 12734-13041, March 25, 1996, to be codified at 15 C.F.R. Parts 730-774) (the Regulations),² based on allegations that on or about April 28, 1992, AVS exported one U.S.-origin low pressure sintering furnace

¹The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notice of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), and extended again on August 14, 1996 (61 Fed. Reg. 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

²The alleged violations occurred in 1992. The Regulations governing the violations at issue are found in the 1992 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1992)).

from the United States to the People's Republic of China without obtaining the validated license required by Section 772.1(b) of the former Regulations; and

BXA and AVS having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby BXA and AVS have agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED,

FIRST, that AVS shall pay a civil penalty of \$5,000, \$3,000 of which shall be paid in accordance with the instructions provided, within 30 days from the date of entry of the appropriate Order. Payment of the remaining \$2,000 shall be suspended for a period of three years from the date of entry of the appropriate Order and shall thereafter be waived, provided that, during the period of suspension, AVS has committed no violation of the Act, or any regulation, order, or license issued thereunder.

SECOND, that, as authorized by Section 11(d) of the Act, the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted, or to be granted, to AVS. Accordingly, if AVS should fail to pay the civil penalty in a timely manner, the undersigned will enter an Order under the authority of Section 11(d) of the Act denying all of AVS's export privileges for a period of one year from the date of entry of this Order.

THIRD, that the proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public.

This Order is effective immediately.

Frank W. Deliberti
Frank W. Deliberti
Acting Assistant Secretary
for Export Enforcement

Entered this first day of May, 1997.

UNITED STATES DEPARTMENT OF
COMMERCE
NEWS

WASHINGTON, D.C. 20230

BUREAU OF
EXPORT
ADMINISTRATION

For Immediate Release:

May 1, 1997

bxa.doc.gov

bxa-97-9

Contacts: Eugene Cottilli

Susan Hofer

(202) 482-2721

**MASSACHUSETTS CO. SETTLES ALLEGATIONS
OF AN UNLICENSED EXPORT TO CHINA**

WASHINGTON -- The Commerce Department today imposed a \$5,000 civil penalty on Advanced Vacuum Systems, Inc. (AVS), of Ayer MA, for allegedly exporting commodities to the People's Republic of China (PRC) without obtaining the required export license, Commerce Acting Assistant Secretary for Export Administration Frank Deliberti announced today.

The Department alleged that AVS exported a low pressure sintering furnace and spare parts valued at over \$600,000 to the PRC without the required export license. At the time of export, the furnace was controlled worldwide for reasons of nuclear nonproliferation. Because the company disclosed the alleged violation to the Department and took effective action to resolve the problem, \$2,000 of the \$5,000 penalty was suspended for three years. The suspended portion of the penalty will be waived after three years as long as there are no further violations. The Bureau of Export Administration's Boston Field Office conducted the investigation.

The Department's Bureau of Export Administration administers and enforces export controls for reasons of national security, foreign policy, nonproliferation and short supply. Criminal penalties, as well as administrative sanctions, can be imposed for violations of the regulations.